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AF/1616  
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Attorney's Docket No.: 09531-023001 / Z01015

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Daniel A. Vallera et al.

Art Unit : 1616

Serial No. : 09/910,639

Examiner : Dameron Levest Jones

Filed : July 20, 2001

Title : RADIOLABELED IMMUNOTOXINS

**MAIL STOP AF**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

**STATEMENT OF SUBSTANCE OF INTERVIEW AND COMMENTS ON  
EXAMINER'S INTERVIEW SUMMARY**

Applicants submit herein: (a) a summary of the telephone interview Applicants' undersigned representative conducted with the Examiner on July 7, 2005; and (b) remarks in regard to the Examiner's summary of that interview.

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## REMARKS

### Summary of telephone interview of July 7, 2005

Applicants' undersigned representative contacted the Examiner in regard to the Advisory Action of June 22, 2005, and conducted a telephone interview with her on July 7, 2005.

In the interview, Applicants' undersigned representative pointed out to the Examiner that, in incorporating the limitation of dependent claims 24, 46, and 50 into independent claims 18, 41, and 48, respectively, in the Amendment and Response filed June 9, 2005, Applicants derived exactly the same claims that the claim objection in the Office Action of March 10, 2005 (at page 7, lines 2-4) stated would be allowable. This claim objection read as follows:

Claims 24, 46, and 50 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The amendments referred to above resulted in independent claims containing the limitations of dependent claims 24, 46, and 50 and ALL the limitations of base claims 18, 41, and 48, respectively. There were no intervening claims under consideration in the application.

In the interview, Applicants' undersigned representative also pointed out to the Examiner that the statements regarding allowable species on page 7, lines 5-9, and page 8, lines 1-3, of the Office Action of March 10, 2005, in no way influenced the interpretation of the above-quoted claim objection in the Office Action. They merely stated allowable species and provided no suggestion that the claims amended as stated in the claim objection would not be allowable. Applicants' undersigned representative also explained in the interview that, since it seemed that the claims amended as recited in the claim objection would indeed be allowable over at least the art cited in the Office Action of March 10, 2005, Applicants had no cause to believe that the Examiner did not mean what was stated in the claim objection.

### Comments on the Examiner's Interview Summary dated July 12, 2005

Applicants point out that, while in her summary of the telephone interview of July 7, 2005, the Examiner records her referral during the interview to the sections of the Office Action

of March 10, 2005, reciting the allowable species, she omits from the interview summary the substance of the above-quoted claim objection in the Office Action. Applicants' undersigned representative recited the claim objection verbatim to the Examiner in the interview and pointed out to her that claim amendments made in the Amendment and Response filed June 9, 2005, resulted in claims that this claim objection stated would be allowable (as explained above under "Summary of telephone interview of July 7, 2005").

In regard to the comments on page 3, lines 4-5, of the Examiner's Interview Summary, Applicants understood the Examiner's statement on page 8, lines 3-6, of the Office Action of March 10, 2005, to mean that the search with respect to the " diphtheria toxin; any radionuclide; and sFv of the monoclonal antibody B3" species had not been expanded. It was not clear at all from that statement that the search with respect to the allowable species of "diphtheria toxin; targeting molecule Her-2/Neu; and radionuclide species is  $^{64}\text{Cu}$ " had not been expanded, especially in view of the language of the claim objection.

Applicants also submit that, contrary to the Examiner's assertion on page 3, lines 7-8, of the Examiner's Interview Summary, Applicants' undersigned representative at no time during the interview stated that the claims amended in a way that the claim objection stated would render them allowable should actually be allowed. Applicants' position is that, if the statement in the claim objection was an error, Applicants' should not be disadvantaged by that error and that appropriately amended claims 18, 41, and 48 should be entered and examined.

Applicant : Daniel A. Vallera et al.  
Serial No. : 09/910,639  
Filed : July 20, 2001  
Page : 4 of 4

Attorney's Docket No.: 09531-023001 / Z01015

### CONCLUSION

In light of the above considerations, Applicants respectfully request that the amendments made in the Amendment and Response filed on June 9, 2005, be entered and that the claims in the application that have not been cancelled or withdrawn be examined.

If the Examiner would like to discuss any of the issues addressed herein, Applicants' undersigned representative can be reached at the telephone number listed below.

Please apply any charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: August 12, 2005

for

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